(21,175.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 162.

AUSTIN W. LORD AND J. MONROE HEWLETT, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF LORD & HEWLETT, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 16, 1909.

1 In the Court of Claims.

No. 24809.

AUSTIN W. LORD AND J. MONROE HEWLETT, Doing Business under the Firm Name and Style of Lord and Hewlett,
against
THE UNITED STATES.

I. *Petition. Filed March* 5, 1904.

To the Honorable the Court of Claims:

The claimants, Austin W. Lord and J. Monroe Hewlett, doing business under the firm name and style of Lord & Hewlett, respectfully represent:

I. That claimants are citizens of the State of New York, and of the United States.

II. That at all of the times hereinafter mentioned, claimants were engaged in the practice of their profession as architects under the firm name of Lord & Hewlett, having their principal office in the City, County and State of New York.

III. That on the 2d day of March, 1901, the Congress of the United States passed an Act appropriating the sum of five thousand dollars ($5,000) to enable the Secretary of Agriculture to have prepared under his direction, plans for a fire proof administrative building to be erected on the grounds of the Department of Agri-
2 culture in the City of Washington, such plans and such recommendations thereon as the Secretary of Agriculture may deem necessary to be transmitted to Congress at its next regular session.

IV. That in accordance with this Act the Secretary of Agriculture proceeded to procure designs for a new building and adopt a plan to have the architects of the said building selected by competition between ten architects, which ten competitors were selected by a commission consisting of the Secretary of Agriculture, the Supervising Architect of the Treasury, D. H. Burnham, of Chicago, Charles F. McKim, of New York, and F. Law Olmstead, of Boston.

V. That thereupon the Secretary of Agriculture issued to the ten architects selected by the Commission as aforesaid, amongst whom were claimants' firm, a document entitled "Programme and Con-"ditions of a Competition for a Building for the Department of "Agriculture in Washington, D. C."

VI. That said programme contained the general conditions of the competition among said architects, and further stated that:

"The Honorable the Secretary of Agriculture having been au-"thorized by an Act of Congress approved March 2d, 1901, to pro-"cure designs for a new building for the Department of Agriculture "in Washington, D. C., it is proposed to make such selection by "competition between ten architects of good professional standing,

"who are citizens of the United States, and who shall be selected by "the Commission provided for below. It must be understood, how- "ever, that while the ultimate purpose of the competition is the "selection of an architect, the Act does not provide for a building, "but simply for a design, to be approved by Congress at the next "session, and, therefore, while it is to be supposed that the archi-
"tect, or firm of architets, whose designs shall be placed first
3 "in this competition will receive the commission to carry
"out the work when the building is authorized, it must be "understood that the Secretary of Agriculture has no authority at "this time to enter into any contract further than is provided for "by this programme."

The programme sets forth, approximately, the conditions and location of the building, modification of which may become necessary. If Congress provides for the erection of the building, the selected architect is then to prepare such design or designs as may in the judgment of the Supervising Architect of the Treasury, be necessary to meet the conditions finally adopted by him.

The said programme further provided that:

"A uniform sum of Three Hundred and Fifty Dollars ($350) "will be paid to each of the competitors invited, with the under- "standing and agreement that, unless otherwise provided for by "Act of Congress, the architect or architects whose designs shall be "placed first, will be awarded the commission for carrying out the "work at a fee computed on the basis of the schedule of charges "adopted by the American Institute of Architects."

VII. That claimants, architects of good professional standing and citizens of the United States, were selected by the Commission provided for in the said programme as one of the ten architects to take part in the said competition.

VIII. That claimants, relying upon the terms of the aforesaid programme, entered into the said competition, complied with all of the terms and provisions of the said programme and competition, and submitted, in accordance therewith, a complete set of drawings with accompanying description, securely wrapped and sealed and addressed to the Commission of Award, Department of Agriculture, Washington, D. C., plainly marked with the name of the building under competition and without any distinguishing mark or device
which might disclose the identity of the competitor.
4 IX. That claimants were the successful competitors, and their plans were placed first over all others by the Committee selected by the Secretary of Agriculture, and the said Honorable Secretary of Agriculture addressed a letter to claimants congratulating them upon their selection as architects, stating that he himself was greatly pleased with the general grasp of the subject as shown by the plans submitted, and that claimants would doubtless hear from the Supervising Architect, Mr. J. K. Taylor, in this matter in a short time, as all details in regard to this work had been placed by him in the hands of the said Supervising Architect.

X. That thereupon the said Supervising Architect, Mr. James K. Taylor, notified claimants that the Honorable Secretary of Agriculture had asked him to represent him as architectural expert and

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make arrangements as to interviews; suggested alterations to claimants, and arranged a conference with claimants and the Honorable Secretary of Agriculture, which took place in Washington, November 9th and 10th, 1901.

XI. That thereafter for a period of more than two years claimants were recognized as the architects for the said proposed building by the Honorable Secretary of Agriculture and by the Supervising Architect, Mr. James K. Taylor, and by other officers of the Department of Agriculture, and claimants, at the request of the parties aforesaid, at various and divers times prepared plans, specifications, drawings and designs whenever they were called upon so to do, and at all times held themselves in readiness to perform any and all work as architects of said proposed building, which they might be called upon to do by the Honorable Secretary of Agriculture, or by
5 persons designated by him to supervise and take charge of the said matters.

XII. That on February 9th, 1903, the Congress of the United States passed an Act appropriating one million five hundred thousand dollars ($1,500,000) and directing the Secretary of Agriculture to have a building erected for the Department of Agriculture and to procure plans and secure estimates providing for the erection of said building complete in all of its details.

XIII. That immediately thereafter the Supervising Architect of the Treasury informed claimants that the Secretary of Agriculture had appointed him under said act as his consulting architect and that in future he would represent said Secretary in the actual carrying out of the work and requested an early date when claimants should go to Washington to take up the signing of the contract for the architectural portion of the work and make arrangements to commence the preparation of the drawings.

XIV. That thereafter claimants continued to act as the architects for the Department of Agriculture for the said proposed building; were in constant communication with said Supervising Architect of the Treasury, and with officers of the Department of Agriculture, and were continuously engaged in the preparation of plans, drawings, sketches and designs for the said building, until the month of May, 1903.

XV. That the programme of competition which embodied the terms of the contract between claimants and the Honorable Secretary of Agriculture, provided in Article IV thereof, as follows:

"A uniform sum of $350 will be paid to each of the competitors
" invited with the understanding and agreement that unless
6 " otherwise provided for by act of Congress, the architect or
" architects whose designs shall be placed first, will be awarded
" commission for carrying out the work at a fee computed on the
" basis of the schedule of charges adopted by the American Insti-
" tute of Architects."

XVI. That the said Act of Congress of February 9, 1903, authorizing the construction of the said building for the Department of Agriculture, was not in conflict with the clause of the said programme of competition above set forth, and did not otherwise pro-

vide, or in any manner whatever provide, for the selection of an architect for the said building.

XVII. That upon the passage of the said Act of February 9, 1903, claimants became entitled to be awarded the commission for carrying out the work at a fee computed on the basis of the schedule of charges adopted by the American Institute of Architects. That claimants were awarded the commission for carrying out the said work by the Honorable Secretary of Agriculture and by the Supervising Architect of the Treasury, designated by the Secretary to represent him.

XVIII. That thereafter the Honorable Secretary of Agriculture discharged the Supervising Architect of the Treasury Department from further supervision over the construction of the said proposed building, and on or about the 11th day of May, 1903, submitted to claimants a proposed contract to be signed by them as architects for the said proposed building, which contract withheld from them as architects the authority to direct the carrying out of the work in accordance with the designs, and provided that claimants should be paid, as full compensation for the designs, drawings and specifications called for therein, three and one-half (3½) per cent of
7 the contract cost of work actually covered by the drawings and specifications furnished by claimants.

XIX. That under the provisions of the programme of competition, claimants were entitled to be awarded "the commission for "carrying out the work at a fee computed upon the basis of the "schedule of charges adopted by the American Institute of Archi-"tects"; that under the schedule of charges adopted by the American Institute of Architects, claimants were entitled to receive as compensation for their services as architects, five (5) per cent upon the cost of the said building, which equalled the sum of seventy-five thousand dollars ($75,000).

XX. That claimants declined to sign and accept the contract hereinbefore referred to, submitted by the Honorable Secretary of Agriculture, and thereupon on the 13th day of May, 1903, were informed by the Secretary of Agriculture that he would look elsewhere for assistance in the matter.

XXI. That claimants are and have been at all times ready and willing to perform their duties as architects under and pursuant to the terms of their employment and for the consideration thereof, as hereinabove set forth, but since the 13th day of May, 1903, they have been prevented from performing their duties as architects by the Honorable Secretary of Agriculture who, in violation of the rights of claimants and without due cause, unlawfully discharged them as architects for the construction and supervision of the building aforesaid.

XXII. That in the performance of their duties as architects, pursuant to the terms of the agreement hereinabove set forth, large sums of money have been necessarily expended by them and
8 the reasonable value of the services rendered by them prior to their unlawful discharge by the Honorable Secretary of Agriculture was the sum of fifteen thousand dollars ($15,000).

XXIII. That no action has been had on this claim in Congress or by any of the Departments. The claimants are the sole owners of this claim and the only persons interested therein; that no assignment or transfer of this claim, or any portion thereof or interest therein, has been made. That the claimants are justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets.

Wherefore, claimants pray for judgment against the United States for the sum of seventy-five thousand dollars ($75,000) and for such other and further relief as to the court may seem just.

COUDERT BROTHERS,
Attorneys for Claimants, No. 71 Broadway,
Borough of Manhattan, New York City.

STATE OF NEW YORK,
City and County of New York, ss:

J. Monroe Hewlett, being duly sworn, says that he is a member of the firm of Lord & Hewlett, the claimants herein; that he has read the foregoing petition and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

J. MONROE HEWLETT.

Sworn to before me, this 1st day of March, 1904.
[SEAL.] CHARLES A. CONLON,
Notary Public, New York Co.

9 II. *Traverse. Filed January 7, 1908.*

In the Court of Claims of the United States, — Term, A. D. 1907-1908.

No. 24809.

LORD & HEWLETT
vs.
THE UNITED STATES.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

JOHN Q. THOMPSON,
Assistant Attorney General.

III. *Argument and Submission of Case.*

On the 7th day of January 1908, this Cause was argued by Mr. Charles and Paul Fuller for the claimants and by Mr. Anderson for the defendants, and submitted.

10 IV. *Findings of Fact, Conclusion of Law, and Opinion of the Court.*

On the 9th day of March 1908 the Court filed its findings of fact, conclusion of law and opinion, and ordered judgment to be entered dismissing the petition of the claimants.

On March 17, 1908 the claimants filed their motion to amend the findings of fact—which motion was argued by Mr. Fuller for the claimants and by Mr. Anderson for the defendants and submitted on the 13th day of April 1908.

And on the 20th day of April 1908 the Court filed the following

Order.

It is ordered that the claimants' motion filed March 17, 1908, to amend the findings herein be allowed in part and overruled in part.

The former findings are withdrawn and amended findings this day filed. The opinion and judgment to stand.

BY THE COURT.

Filed April 20, 1908.

11 AUSTIN W. LORD and J. MONROE HEWLETT, Doing Business under the Firm Name and Style of Lord & Hewlett,

v.

THE UNITED STATES.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

The claimants, Austin W. Lord and J. Monroe Hewlett, both citizens of the United States and residents of the city and State of New York, were at the times hereinafter mentioned copartners practicing their profession as architects, under the firm name and style of Lord & Hewlett, with their offices in the city of New York.

II.

In the general appropriation act approved March 2, 1901, there appears the following provision, prepared by the Department of Agriculture:

"To enable the Secretary of Agriculture to have prepared, under his direction, plans for a fireproof administrative building, to be erected on the grounds of the Department of Agriculture, in the city of Washington, said plans, and such recommendations thereon as the Secretary of Agriculture may deem necessary, to be transmitted to Congress at its next regular session, five thousand dollars, to be immediately available.

"Approved, March 2, 1901."

III.

The following "Programme and conditions of a competition for a building for the Department of Agriculture in Washington, D. C.," was prepared by the Supervising Architect of the Treasury Department, and approved by the Secretary of Agriculture:

General Conditions.

First. The honorable the Secretary of Agriculture having been authorized by an act of Congress approved March 2, 1901, to procure designs for a new building for the Department of Agriculture in Washington, D. C., it is proposed to make such selection by competition between ten architects of good professional standing, who are citizens of the United States and who shall be selected by the commission provided for below. It must be understood, however, that while the ultimate purpose of the competition is the selection of an architect, the act does not provide for a building, but simply for a design to be approved by Congress at the next session; and, therefore, while it is to be supposed that the architect or firm of architects whose designs shall be placed first in this competition will receive the commission to carry out the work when the building is authorized, it must be understood that the Secretary of Agriculture has no authority at this time to enter into any contract further than is provided for by this programme. The programme sets forth, approximately, the conditions and location of the building, modifications of which may become necessary. If Congress provides for the erection of the building the selected architect is then to prepare such design or designs as may, in the judgment of the Supervising Architect of the Treasury, be necessary to meet the conditions finally adopted by him.

Second. The commission above referred to, to be appointed, will consist of the honorable the Secretary of Agriculture; the Supervising Architect of the Treasury; Mr. D. H. Burnham, of Chicago; Mr. Charles F. McKim, of New York, and Mr. F. Law Olmstead, of Boston, Mass., and their duty shall be to judge and report as to the relative merit of the design submitted. The three members of this commission, not in Government service, shall receive in full compensation for their services, including traveling and subsistence expenses, the sum of two hundred and fifty dollars ($250).

12 Third. Full data and information as to cost and general requirements of the building will be furnished by the commission.

Fourth. A uniform sum of three hundred and fifty dollars ($350) will be paid to each of the competitors invited, with the understanding and agreement that unless otherwise provided for by act of Congress, the architect or architects whose design shall be placed first will be awarded the commission for carrying out the work, at a fee computed on the basis of the schedule of charges adopted by the American Institute of Architects.

Fifth. It must be understood that no claim shall be made upon the United States by any competitor for any fee, percentage, or

payment whatever, or for any expense incident to or growing out of his participation in this competition, other than is expressly provided for by the terms mentioned herein.

Sixth. The Department agrees to make selection from the designs submitted if, in the opinion of the commission, one suitable in all respects as to design, detail, and cost be submitted; but expressly reserves the right to reject any and all designs and reopen the competition if, in the opinion of the commission, no design suitable in all respects be submitted.

Seventh. It must be understood that a competitor will forfeit all privileges under the regulations who shall violate any of the conditions governing this competition, or who shall seek in any way, directly or indirectly, to gain advantage by influencing in his favor any of the commission.

Eighth. No member of the commission herein referred to shall have any interest whatever, direct or indirect, in any design submitted in this competition, or any association with, or employment by, any of the competitors, and no employee of any Department shall be permitted to enter the competition herein provided for.

Ninth. Each set of drawings, with its accompanying description, must be securely wrapped and sealed and addressed to the "Commission of Award, Department of Agriculture, Washington, D. C.," plainly marked with the name of the building under competition, and without any distinguishing mark or device which might disclose the identity of the competitor.

Tenth. There must be inclosed with each set of drawings, etc., a plain white opaque envelope, within which the competitor will place a card bearing his name and address. The envelope must be securely sealed with a plain wax seal having no impression, legend, device, or mark upon it which might disclose the identity of the competitor.

Eleventh. Upon opening the package containing the drawings, the commission will number the envelope containing the name and address of the competitor, and will place the same number upon each drawing plan, specification, etc., submitted by him, and will preserve, unopened, the envelope containing such name and address until final selection shall be made.

Twelfth. The commission shall place out of competition any set of drawings as to which the conditions of these regulations have not been observed and examine those remaining.

Thirteenth. When the award in this competition has been made, all designs of unsuccessful competitors will be returned to them, and no use will be made of any of the drawings not accepted, or of any part that may be original, without the consent of the author thereof.

Special Requirements.

The cost of the building must not exceed, when built in its entirety, $2,000,000, including architect's fees, plumbing, gas piping, electric conduits and wiring, heating and ventilating apparatus, etc., necessary to complete the building ready for occupancy, saving and excepting mural decorations and painting and furniture only.

The building must be of fireproof construction, the exterior to be of such materials as each competitor deems best for the execution of his design; the desire of the commission in regard to the style to be employed is that it be classic in character, based upon the study of the best Roman traditions, modified to suit modern requirements. The commission has felt it wise to impose this condition, in view of the close proximity of the Capitol and the Washington Monument, which, with the Government buildings to be erected in the future, should form a single composition. The interior to be finished, generally, in the same manner as a first-class office structure.

The minimum requirements of the building are as follows: Building to have three stories and basement and a ground area of approximately 55,000 square feet. The work of the Department of Agriculture has been divided into four groups in the accompanying tables, namely, (*a*) administrative; (*b*) executive; (*c*) library, museum, and lecture hall; and (*d*) laboratories. The tables show the various branches of the Department, their relation to each other, the number of square feet estimated for each branch, and the general nature of the work in each case.

13 It is believed that the administrative officers should be on the second floor of the main building, and that the laboratories should be in the wing, away from the principal administrative and executive work. The Bureau of Animal Industry, for example, is constantly working on the diseases of animals, in which infection experiments are made, and in which there is always more or less danger to which persons not directly connected with the work should not be exposed. The chemical work of the Department necessarily causes unpleasant odors and fumes, and provision should be made to prevent these from inconveniencing the other workers. While part of the place for the laboratory group will be devoted to laboratory work exclusively, a part will be required for more or less executive work connected with laboratory investigations, but in most cases this has been indicated in the tables.

One important feature that must be considered throughout the entire building is light. Light is absolutely necessary to all laboratory work, and, of course, naturally important in connection with the other branches of work. Certain branches of the Department, such as the division of supplies, engineer's office, etc., have not been mentioned, but these, it is believed, could be well provided for in the basement.

As to the heating and power plant, it would probably be preferable to consider it entirely apart from the main structure. This could doubtless be easily arranged, owing to the amount of available ground.

From the tables it will be seen that 158,400 square feet of space is estimated for, and that it is divided among the different groups as follows:

* * * * * * *

IV.

On October 24, 1901, Messrs. Lord & Hewlett, who had previously been invited to enter the competition presented by the program set

forth above, received the award of the commission, and their plans were selected, and notice to this effect was transmitted to them by the Secretary of Agriculture on October 28, 1901. They were likewise paid, and accepted, the compensation of $350 prescribed by the program of competition. Subsequently, after full discussion with the Department of Agriculture, in which increased size and more expensive materials were proposed by the department, it was agreed by both parties that the buildings so erected probably would cost $2,500,000, and a bill calling for the appropriation of that amount of money to erect the building, together with the original plans previously accepted by the commission, was sent to Congress.

V.

Subsequent to the submission of the plans and specifications of the claimants to Congress no further steps were taken by Congress until February 9, 1903, when an act prepared by the Committee on Public Buildings and Grounds of the House of Representatives, without the knowledge or assistance of the Secretary of Agriculture, was passed:

"An Act for the Erection of a Building for the Use and Accommodation of the Department of Agriculture.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of Agriculture be, and he is hereby, authorized and directed to cause a suitable and commodious fireproof building, for the use and accommodation of the Department of Agriculture, including all of its Bureaus and offices now occupying rented quarters in the District of Columbia, to be erected on such portion of the grounds of the Department of Agriculture belonging to the United States as he may deem expedient, immediately in the vicinity of the present building, said building to be constructed in accordance with
14 plans, to be procured, based on accurate estimates, providing for the erection of said building, complete in all of its details, as herein described, and within the total cost of not exceeding the sum herein stipulated, and he is hereby authorized, after procuring such plans, and after due advertisement for proposals, to enter into contracts within the limit of cost hereby fixed and subject to appropriations to be made by Congress, for the erection of said building complete, including heating and ventilating apparatus, elevators, and approaches, and the removal of the present building or buildings of the Department of Agriculture on said grounds.

"SEC. 2. That the supervision of the construction of said building shall be placed in charge of an officer of the Government especially qualified for the duty, to be appointed by the Secretary of Agriculture, subject to the approval of the head of the department in which such officer is employed, who shall receive for his additional services an increase of twenty-five per centum of his present salary, such increase to be paid out of the appropriation for the building herein authorized.

"SEC. 3. That the limit of cost for the construction of said building

complete, including heating and ventilating apparatus, elevators and approaches, and the cost for removal of the present building on buildings of the Department of Agriculture, is hereby fixed at one million five hundred thousand dollars, and no contract shall be entered into or expenditure authorized in excess of said amount.

"Approved, February 9, 1903."

VI.

Shortly after the passage of the act of March 2, 1901, authorizing plans for the Agricultural buildings, James Knox Taylor, Supervising Architect of the Treasury Department, was designated as an expert adviser by the Secretary of Agriculture; and an advisory building committee was also formed by the Secretary of Agriculture, consisting of Dr. B. T. Galloway, chairman; Dr. D. E. Salmon, and Mr. A. C. True. Neither Mr. Taylor nor any of the members of this committee had authority to enter into any contract or agreement with the claimants, which arrangement was continued under the act of 1903 until May 4, 1903, when Mr. James Knox Taylor was superseded as expert adviser to the Secretary of Agriculture by the appointment of Capt. John S. Sewell in his stead.

VII.

Subsequent to the passage of the act of February 9, 1903, negotiations were entered into with the claimants. Numerous letters were interchanged and personal consultations had between the claimants and Mr. Taylor, expert adviser, and Dr. Galloway, chairman of the advisory committee, relating to the detail of plans and specifications for the erection of such a building as was provided for by the act of February 9, 1903. At no time during the pendency of said negotiations, and up to May 4, 1903, had the claimants and the Secretary of Agriculture or any person or committee appointed by him to act for him, agreed upon or accepted any specific plans or specifications theretofore prepared and submitted by claimants for the erection of said building. On the contrary, they could not agree, and relations were terminated by the following letter:

OFFICE OF CHIEF OF BUREAU,
WASHINGTON, D. C., *April* 15, 1903.

Lord & Hewlett,
16 East Twenty-third Street, New York City.

GENTLEMEN: I am directed by the honorable Secretary of Agriculture to inform you that it appears from the statements made by you and by Mr. Taylor, the supervising architect, that there seems to be some doubt as to his ability to carry out the spirit and letter of the law in regard to the proposed buildings for this Department. For this reason he instructs me to say that he wishes to terminate present relations in order to be free to take the entire matter under reconsideration along different lines, if it is thought best to do so.

Very respectfully,

B. T. GALLOWAY,
Chairman, Advisory Building Committee.

To which letter the claimants replied, as follows:

April 17, 1903.

DEAR SIR: We are in receipt of a communication from Doctor Galloway, chairman of your advisory committee, stating that it appears from the statements made by us and by Mr. Taylor, the supervising architect, that there seems to be some doubt as to your being able to carry out the spirit and letter of the law in regard to the proposed building for your Department.

15 We believe that there must be some misapprehension, as we are confident that this is entirely possible and, as we understood it, the purpose of our recent conference was merely to determine the most advisable method of procedure.

May we request a personal interview upon this matter at your earliest convenience upon your return?

Very respectfully, yours,

(Signed) LORD & HEWLETT.

Hon. James Wilson, Secretary of Agriculture, Washington, D. C.

VIII.

After the receipt of the claimants' reply to the communication breaking off negotiations with them, a representative of their firm visited the Department of Agriculture with a view to resuming negotiations, and in pursuance of that visit the claimants later submitted some pencil block sketches showing rearrangements of buildings that in their judgment might be constructed. They were block drawings, on tracing paper showing the grouping and arrangement of separate buildings, and were tentative sketches that were capable of being shifted around in any way to locate the actual buildings themselves. They were not working plans. When shown these drawings, the Secretary of Agriculture seemed very well pleased with them, and on May 4, 1903, the claimants were notified of the appointment of Capt. John S. Sewell as expert adviser to the Secretary, and were notified to visit Washington on the 7th of May, of the same year for consultation. This invitation, through one of the members of the building committee, expressed the hope that they would reach a conclusion which would enable the architects to begin work at once on the plans.

IX.

On May 4, 1903, and subsequent thereto, the negotiations between claimants and Captain Sewell, superintendent as aforesaid, had to do exclusively with the preparation and execution of a written contract providing for their employment as architects for said building. Captain Sewell had prepared and submitted to claimants two forms of contract wherein claimants' compensation for services as architects for said building was fixed at 3½ per cent of contract price. After much lengthy correspondence, discussing the propriety of such a fee, and likewise the respective duties of the architects and superintendent of construction provided for by the act of February 9, 1903, claimants declined to accept the terms of the said agreement, at the same

time insisting that the compensation provided for in the original programme of the Secretary, to wit, 5 per cent, should obtain; that they were employed under and by virtue of said programme, and subsequent proceedings thereto.

The contracts submitted are as follows:

"CLAIMANTS' EXHIBIT 34.

"This agreement, &c., witnesseth: The said firm of Lord & Hewlett will prepare and furnish all the architectural and structural designs, drawings, and specifications required for the erection of the new building for the U. S. Department of Agriculture authorized by the act of Congress approved February 9, 1903. These designs, drawings, and specifications must include all the necessary general plans, elevations, and sections; all the large scale and full-size detail drawings, and the complete specifications required to enable a competent builder to properly execute all or any part of the work; they must clearly set forth the nature of all materials, and the standards to which they must conform; they must show all lines and dimensions true to scale, and all moldings or carved work in full size; all ruling dimensions must be shown in figures, and must be carefully checked up by the architects to insure their correctness. Plans and specifications for heating, ventilation, plumbing, electric
16 lighting, refrigeration, elevators, and mechanical equipment generally, will be obtained by the United States directly from experts in those lines, and will not be furnished by the architects; but the architects must collaborate with these experts, and with the duly appointed representatives of the Secretary of Agriculture, to the end that all plans may be consistent with each other, and accomplish the purposes for which the building is required. The supervision of the construction work will be in the hands of an officer appointed under the terms of the act authorizing the building. This officer will determine when the plans and specifications have been complied with, will certify payments due, and will directly control all contractors engaged upon the work; but the architects must give him such counsel and advice, in person and on the spot when necessary, as will enable him to correctly interpret the artistic intent of the drawings and specifications. The plans for foundations, structural work, fireproofing, and everything coming within the limits of civil engineering will be developed by the architects in consultation with the officer supervising the construction of the building; of fixtures and appurtenances forming part of the finished building, such as chandeliers, light brackets, elevator enclosures and screens for direct-indirect radiators, if any are used; those which affect its artistic value will be designed or selected by the architects or with their advice, and will be classified with the arthitectural work; but the cost of wiring and equipping such fixtures and appurtenances, and the total cost of all fixtures and appurtenances having a purely utilitarian value, will be charged to mechanical aquipment. The said party of the first part will, for and in behalf of the United States of America, cause to be paid to the said firm of Lord & Hewlett, from

the appropriation for the construction of the building, as full compensation for the designs, drawings, specifications, and advice called for herein, three and one-half per cent (3½%) of the cost of work actually covered by the drawings and specifications furnished by the parties of the second part; and in addition thereto such reasonable actual traveling expenses as may be incurred at the request or by authority of the party of the first part, subsequent to the execution of this contract. Such traveling expenses shall consist of the actual cost of a first-class railroad ticket, a double berth or seat in a Pullman car, necessary transfers at a rate not exceeding fifty (50) cents each, and actual cost of lodging and subsistence at a rate not exceeding six dollars ($6.00) per day for each person. Accounts for traveling expenses must be approved by the party of the first part before being paid. The compensation of three and one-half per cent (3½%) herein provided for shall be paid as follows: Upon the receipt and approval of general elevations, plans, sections, and one perspective view, one per cent (1%)); upon the receipt and approval of the foregoing drawings and, in addition thereto, of general working drawings and specifications, an additional sum of one and one-half per cent (1½%); upon the receipt and approval of drawings and specifications complete in all details, an additional sum of one-half of one per cent (½ of 1%). All these percentages will be based upon estimated costs, to be approved by the party of the first part. Upon the completion of the building in all respects, a final sum shall be paid to the parties of the second part, sufficient to make up their full compensation of three and one-half per cent (3½%), based on the actual cost of the work.

"It is further agreed that all original drawings shall be subject to the approval of the party of the first part; all except full-size details shall be made upon the best quality of tracing linen, and all approved originals, being part of the official records of the works, shall remain the property of the United States.

"CLAIMANTS' EXHIBIT 35.

"E. D. L.

"This agreement, &c., witnesseth: The said firm of Lord & Hewlett will prepare and furnish all the architectural and structural designs, drawings, and specifications required for the erection of the new buildings for the U. S. Department of Agriculture authorized by the act of Congress approved February 9, 1903. These designs, drawings, and specifications must include all the necessary general plans, elevations, and sections, all the large scale and full-size detail drawings, and the complete specifications required to enable a competent builder to properly execute all or any part of the work; they must clearly set forth the nature of all materials, and the standards to which they must conform; they must show all lines and dimensions true to scale, and all moldings or carved work in full size; all ruling dimensions must be shown in figures, and must be carefully checked up by the architects to insure their correctness. The said firm will also furnish plans and specifications for heating, ventilation, plumb-

ing, electric lighting, refrigeration, elevators, and mechanical equipment generally. The supervision of all the construction work and mechanical equipment generally will be in the hands of an officer appointed under the terms of the act authorizing the building. This officer will determine when the plans and specifications have been complied with, will certify payments due, and will directly control all contractors engaged upon the work; but the architects must give him such counsel and advice, in person and on the spot when called for, as will enable him to correctly interpret the artistic intent
17 of the drawings and specifications. The plans for foundations, structural work, fireproofing, and everything coming within the limits of civil and mechanical engineering will be developed by the architects in consultation with the officer supervising the construction of the building. The said party of the first part will, for and in behalf of the United States of America, cause to be paid to the said firm of Lord & Hewlett, from the appropriation for the construction of the building, as full compensation for the designs, drawings, and specifications called for herein, three and one-half per cent (3½%) of the contract cost of work actually covered by the drawings and specifications furnished by the parties of the second part. And in addition thereto actual traveling expenses and a per diem compensation for the rendition of such services and advice as may require the presence of the architects at the site of the building. Traveling expenses shall consist of the actual cost of a first-class railroad ticket, a double berth or seat in a Pullman car, necessary transfers at a rate not exceeding fifty cents each, and actual cost of lodging and subsistence at a rate not exceeding six dollars ($6.00) per day for each person. When the advice is given by a member of the firm of Lord & Hewlett, the per diem compensation will be at the rate of fifty dollars ($50.00) per day for each person; the time to be paid for will be computed on the basis of a day of twenty-four hours, and will include only time spent in actual consultation and advice at the site of the building in Washington, D. C.; a fraction of a day will be allowed as a whole day; in case the architects are represented by anyone not a member of the firm, the per diem compensation will be reduced to ten dollars ($10.00) per day for each person. The compensation of three and one-half per cent (3½%) herein provided for shall be paid as follows: Upon the receipt, approval, and acceptance of general elevations, plans, sections, and one perspective view, one per cent. (1%); upon the receipt and approval of the foregoing drawings and in addition thereto, of general working drawings and specifications, an additional sum of one and one-half per cent. (1½%); upon the receipt and approval of drawings and specifications complete in all details, an additional sum of one-half of one per cent. (½ of 1%). All these percentages will be based upon estimated costs, to be approved by the party of the first part. Upon the completion of the building in all respects, a final sum shall be paid to the parties of the second part, sufficient *up* to make their full compensation of three and one-half per cent. (3½%), based on the actual cost of the work.

"It is further agreed that all original drawings shall be subject to

the approval and acceptance of the party of the first part; all except full size details shall be made upon the best quality of tracing linen, and all approved originals, being part of the official record of the work, shall remain the property of the United States. The architects shall not make any changes in the drawings or specifications that will materially affect the strength, safety, durability, or cost of the building without previous written authority from the party of the first part.

X.

On February 16, 1903, James K. Taylor had submitted to claimants for their examination and approval a form of contract looking toward their employment as architects for the construction of said building, in which contract the compensation set forth was 5 per cent of sum expended in the erection of the same. Claimants do not appear to have examined, approved, executed, or returned said contract. What disposition was ever made of said contract is not shown.

XI.

On May 13, 1903, the Secretary of Agriculture addressed the following letter to the claimants:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *May* 13, 1905.

Lord & Hewlett, 16 East Twenty-third Street, New York City.

GENTLEMEN: Your communication of recent date, in answer to our letter asking you to give us a definite statement as to whether or not you could see your way clear to accept the form of contract in reference to the erection of buildings for the Department, was received.

I regret to say that your proposition is not satisfactory, and I shall, therefore, look elsewhere for assistance in this matter. I shall be obliged if you will please return to the Department, at once, at our expense, all memoranda, sketches, drawings, etc., which have been submitted by officers of the Department, bearing on this subject.

Very respectfully, JAMES WILSON, *Secretary.*

The form of contract referred to is the contract offered to claimants by Captain Sewell and set forth in Finding IX.

18 XII.

The schedule of mi*m*imum charges of the American Institute of Architects in force at the time that the plans of the claimants were successful in the competition and when the contract offered by the Secretary was declined, reads as follows:

American Institute of Architects—Schedule of Mi*m*imum Charges—Professional Practice of Architects, as Usual and Proper.

For full professional services (including supervision), five per cent upon the cost of the work.

For partial service, or in case of the abandonment or suspension of the work, the charge for partial service is as follows:

Preliminary studies, consisting of drawings such as ground plan, one upper floor plan and elevation, or perspective view of exterior, special fee according to the magnitude of the work. For full set of preliminary drawings, including the above, and such additional elevations, plans, and sections as are necessary to illustrate the general scheme without working drawings, and including one revision to correct the same, one (1) per cent; preliminary studies, general working drawings and specifications, two and a half (2½) per cent; preliminary studies, general working drawings, specifications, and details, three and a half (3½) per cent.

For works that cost less than $10,000, or for monumental and decorative work, and designs for furniture a special rate in excess of the above. * * *

Conclusion of Law.

From the foregoing findings the court decides as a conclusion of law that the petition be dismissed. Judgment is ordered for the defendants.

Opinion.

BOOTH, J., delivered the opinion of the court:

The claimants, Lord & Hewlett, architects, bring this suit to recover damages for an alleged breach of contract. The contract is not in writing. Its existence depends upon a sequence of events connected with the construction of the new building for the Agricultural Department. Congress, on March 2, 1901, inserted the following provision in the general appropriation act, viz:

"To enable the Secretary of Agriculture to have prepared, under his direction, plans for a fireproof administrative building, to be erected on the grounds of the Department of Agriculture, in the city of Washington, said plans, and such recommendations thereon as the Secretary of Agriculture may deem necessary, to be transmitted to Congress at its next regular session, five thousand dollars, to be immediately available.

"Approved, March 2, 1901."

In pursuance of the above enactment the Secretary of Agriculture prepared and issued a programme of competition. The scheme adopted by the Secretary to secure said plans included the extension of invitations to ten leading American architects to enter said competition, the award to be made by a commission named therein, and the successful competitor's plans to be submitted to Congress as the law provided. A nominal sum was named in the programme of competition as compensation for the efforts of the competitors, and the additional inducement of permanent employment was expressly proffered the successful architects in the event of subsequent legislation authorizing the construction of the building in accord-
19 ance with said programme. The compensation in case of permanent employment was to be computed on the basis of the

schedule of charges adopted by the American Institute of Architects The Secretary of Agriculture was also expressly cautious to warn the competitors that the hope of future employment was entirely con tingent; that the limitations in the act of March 2, 1901, marked definitely the scope of his authority in the premises, and he could only publish what he would do in the event of subsequent legislation adopting his procedure. The claimants, having accepted the invitation to participate in the competition as aforesaid, prepared and submitted plans for the proposed building, and their plans were selected by the committee for transmission to Congress as the law provided.

Nothing further was done until the passage of the act of February 9, 1903, providing as follows:

"An Act for the Erection of a Building for the Use and Accommodation of the Department of Agriculture.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture be, and he is hereby, authorized and directed to cause a suitable and commodious fireproof building, for the use and accommodation of the Department of Agriculture, including all of its Bureaus and offices now occupying rented quarters in the District of Columbia, to be erected on such portion of the grounds of the Department of Agriculture belonging to the United States as he may deem expedient, immediately in the vicinity of the present building, said building to be constructed in accordance with plans, to be procured, based on accurate estimates, providing for the erection of said building, complete in all of its details, as herein described, and within the total cost of not exceeding the sum herein stipulated, and he is hereby authorized, after procuring such plans, and after due advertisement for proposals, to enter into contracts within the limit of cost hereby fixed and subject to appropriations to be made by Congress, for the erection of said building complete, including heating and ventilating apparatus, elevators, and approaches, and the removal of the present building or buildings of the Department of Agriculture on said grounds.

"SEC. 2. That the supervision of the construction of said building shall be placed in charge of an officer of the Government especially qualified for the duty, to be appointed by the Secretary of Agriculture, subject to the approval of the head of the department in which such officer is employed, who shall receive for his additional services an increase of twenty-five per centum of his present salary, such increase to be paid out of the appropriation for the building herein authorized.

"SEC. 3. That the limits of cost for the construction of said building complete, including heating and ventilating apparatus, elevators, and approaches, and the cost for removal of the present building or buildings of the Department of Agriculture, is hereby fixed at one million five hundred thousand dollars, and no contract shall be entered into or expenditure authorized in excess of said amount.

"Approved, February 9, 1903."

Immediately after the passage of the foregoing statute the Department of Agriculture entered into negotiations with the claimants in reference to plans and specifications for the building provided therein. A most voluminous correspondence, together with several interviews looking toward the final adoption of some specific plan, passed between the parties. The termination of all negotiations and relations between the claimants and defendants occurred in May, 1903, and at a time when no agreement had been reached as to what plans would be adopted. The final rupture arose over the terms and conditions of a written contract submitted to the claimants by the Department covering their services as architects in the construction of the building. The contract mentioned provided a fee of 3½ per cent of the sum expended for the building as claimants' compensation, and also for supervision of construction of the building by Captain Sewell, who had been appointed by the Secretary for that purpose. To both of these provisions claimants declined to yield, asserting at the time the existence of a contract in accordance with the terms and conditions of the programme of competition into which they had entered, received the award, and which the Congress had recognized by the act of February 9, 1903; that subsequent to the passage of said act claimants had been recognized by defendants as the regularly employed architects for that purpose, and nothing remained to be done except the execution of a contract in strict accord with said former proceedings.

20 The act of March 2, 1901, as advisory in character. It is difficult to see how a contract obligating the defendants for the payment of any sum in excess of $5,000 could be predicated thereon. Discretion was allowed the Secretary as to the manner of securing plans, but absolutely none as to the amount to be expended. The Secretary recognized the limitations of the act in express words, and even without such notice the claimants were obligated to know the law. The language of the act is exceedingly circumspect. The Congress reserved the right to pass upon the plans and specifications when submitted, the question of their availability, the amount required to carry them into execution, and all the details of the transaction were withheld from the Secretary. The inducements engrafted into the programme of competition as to future permanent employment by the Secretary were *ultra vires*. True, the Congress could by subsequent and independent legislation ratify the proceedings of the Secretary in the premises, and thereby obligate the defendants for their faithful performance, but this was not done. After a lapse of nearly two years, the Congress passed the act of February 9, 1903. Aside from the identity of the subject-matter of the legislation, the two statutes are entirely dissimilar. The act of 1903 makes no reference to former proceedings, mentions no plans or specifications, and, in fact, in express terms directs the erection of the building "in accordance with plans to be procured, based on accurate estimates." The act of 1903 authorizes a building, makes appropriation therefor, and confers plenary power and authority on the Secretary to carry it into execution. It is independent legisla-

tion, including within its scope only such power and authority as its express terms provide.

As a matter of fact the claimants herein, in response to the programme of competition, had submitted elaborate plans calling for the construction of a monumental structure, estimated to cost $2,500,000. Is it not apparent from the amount appropriated by the act of 1903 that the previous efforts of the Secretary had not been ratified? The passage of the act of March 2, 1901, and the proceedings had thereunder, constituted one transaction. The passage of the act of February 9, 1903, and the proceedings thereunder, was likewise a distinct transaction. They were not in anywise in *pari materia*. The defendants incurred no obligations under the act of 1901 which were continued in virtue of the act of 1903. The continuity of the proceedings were interrupted, and that which had gone on previous to the act of 1903 was effectually closed as a separate transaction by the passage of the later act. What occurred subsequent to the passage of the act of 1903 was negotiation. The Secretary fully recognized the eminent ability of the claimants, and was apparently desirous of securing their services. At no time up to the time of the final severance of their relations had there been an agreement as to plans or specifications, much less as to employment. Claimants' refusal to finally accede to written contract proffered for their employment was based as much upon professional ethics as quantum of compensation. The act of 1903, under which the Secretary was bound to proceed, especially provided for the supervision of the construction of said building by an officer of the Government to be appointed by the Secretary. Just what is meant by the term "supervision" in the act it is unnecessary to determine. The provisions for his appointment were mandatory, no contract failing to provide as the act commanded could have been executed, and the claimants declining to accept the terms and conditions of such a contract terminated their relations with the defendants.

The questions involved, being almost wholly ones of fact, the court has not deemed it necessary to cite authorities upon the elementary principles of law governing their application.

We are unable to reach any other conclusion than that the petition should be dismissed.

Petition dismissed and judgment ordered for the defendants.

BY THE COURT.

21 *Judgment of the Court.*

No. 24,809.

AUSTIN W. LORD and J. MONROE HEWLETT, Doing Business under the Firm Name of Lord and Hewlett,

vs.

THE UNITED STATES.

At a Court of Claims held in the City of Washington on the 9th day of March 1908 judgment was ordered to be entered as follows:

The Court on due consideration of the premises finds for the defendants, and do order, adjudge and decree that the petition of the Claimants the said Austin W. Lord and J. Monroe Hewlett doing business under the firm name of Lord and Hewlett, be and the same is hereby dismissed.

BY THE COURT.

22 *Application for and Allowance of Appeal.*

No. 24809.

AUSTIN W. LORD and J. MONROE HEWLETT, Doing Business under the Firm Name and Style of Lord & Hewlett, Claimants,
against
THE UNITED STATES, Defendant.

From the judgment rendered in the above entitled cause on the ninth day of March, 1908, in favor of the defendant, and from an Order affirming said judgment entered on the twentieth day of April, 1908, the claimants, by their attorneys, on the seventh day of May 1908, make application for and give notice of an appeal to the Supreme Court of the United States.

COUDERT BROTHERS,
Attorneys for Claimants.

Filed May 7, 1908.

Ordered: That this appeal be allowed as prayed for.

BY THE COURT.

May 7, 1908.

23 Court of Claims.

No. 24809.

AUSTIN W. LORD and J. MONROE HEWLETT, Doing Business under the Firm Name of Lord and Hewlett,
vs.
UNITED STATES.

I John Randolph Assistant Clerk of the Court of Claims hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact, and conclusion of law and opinion of the Court, of the judgment of the Court dismissing the petition, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 11th day of May 1908.

[Seal Court of Claims. Reipublicæ Civibusque.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: File No. 21,175. Court of Claims. Term No. 162. Austin W. Lord and J. Monroe Hewlett, doing business under the firm name and style of Lord & Hewlett, appellants, vs. The United States. Filed May 16th, 1908. File No. 21,175.